REMARKS

The present Amendment is in response to the Office Action. Claim 17 is amended to correct its dependency. Claims 1-15 and 17-21 remain pending (claim 16 having been cancelled by a previous amendment). Applicants respectfully note that because the Office Action is supplementary to the Office Action mailed April 29, 2008, it "establishes a new date from which the statutory [reply] period runs." *See MPEP* 710.06.

Applicants also note at the outset that, although the Office Action Summary indicates that claim 17 is rejected, Applicants were unable to find any reasons for the rejection of claim 17 in the Detailed Action. See 37 C.F.R. 1.104 ("The reasons for any adverse action or any objection or requirement will be stated in an Office action and such information or references will be given as may be useful in aiding the applicant…to judge the propriety of continuing the prosecution.") Therefore clarification is respectfully requested as to the disposition of claim 17.

Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

I.   GENERAL CONSIDERATIONS

Applicants respectfully note that the remarks herein do not constitute, nor are they intended to be, an exhaustive enumeration of the patentable distinctions between any cited references and the invention, example embodiments of which are set forth in the claims of this application. Rather, and in consideration of the fact that various factors make it impractical to enumerate all the patentable distinctions between the invention and the cited art, as well as the fact that the Applicants have broad discretion in terms of the identification and consideration of the base(s) upon which the claims distinguish over the cited references, the distinctions identified and discussed herein are presented solely by way of example. Consistent with the foregoing, the discussion herein is not intended, and should not be construed, to prejudice or foreclose contemporaneous or future consideration by the Applicants, in this case or any other, of: additional or alternative distinctions between the invention and the cited references; and/or, the merits of additional or alternative arguments.

Applicants note as well that the remarks, or a lack of remarks, set forth herein are not intended to constitute, and should not be construed as, an acquiescence, on the part of the

Applicants: as to the purported teachings or prior art status of the cited references; as to the characterization of the cited references advanced by the Examiner; or as to any other assertions, allegations or characterizations made by the Examiner at any time in this case. Applicants reserve the right to challenge the purported teachings and purported prior art status of the cited references at any appropriate time.

II. CLAIM REJECTIONS UNDER 35 U.S.C. § 103

A. Claims 1-6 and 16

The Examiner rejected claim 1 under 35 U.S.C. § 103 as being unpatentable over United States Patent No. 6,205,122 to *Sharon et al.* ("*Sharon*") in view of United States Patent No. 7,301,990 to *Jayaraman et al.* ("*Jayaraman*"); rejected claims 2 and 16 under 35 U.S.C. § 103 as being unpatentable over *Sharon* and *Jayaraman* in view of U.S. Publication No. 2003/0063571 to *Ikeda et al.* ("*Ikeda*"); and rejected claims 3-6 under 35 U.S.C. § 103 as being unpatentable over *Sharon*, *Jayaraman*, and *Ikeda* in view of U.S. Publication No. 2004/0081186 to *Warren* ("*Warren*"). Applicants respectfully traverse the rejection.

As an initial matter, Applicants note that claim 16 is cancelled. Therefore, the rejection of claim 16 is moot and should be withdrawn.

Claim 1 recites a method comprising:

> capturing and storing channelized data with a network analyzer;
>
> interleaving the channelized data into a unitary data stream in chronological order; and
>
> processing the unitary data stream to extrapolate indicators of network elements.

The Examiner asserted that *Sharon* discloses "capturing and storing channelized data with a network analyzer," but conceded that *Sharon* does not disclose the interleaving and processing limitations. *See Office Action*, p. 2. However, according to the Examiner, "The general concept of interleaving the channelized data into a unitary data stream in chronological order; and processing the unitary data stream to extrapolate indicators of network element is well known in the art as taught by Jayaraman." *See Office Action*, p. 3. Applicants respectfully disagree.

Jayaraman is generally directed to a wireless communication system and techniques for performing equalization of multiple signals for soft handoff in the wireless communication

system. *See* Title and Abstract. The passage referenced by the Examiner (*Jayaraman*, col. 3, lines 32-55) as allegedly teaching the aforementioned interleaving and processing limitations, relates to processing data for transmission over a forward link in the wireless communication system. Therefore, contrary to the Examiner's assertion, *Jayaraman* is not concerned at all with "indicators of network elements," much less "processing…to extrapolate indicators of network elements," as claimed.

Moreover, the column 3 passage referenced by the Examiner describes a TX data processor 214 that "interleaves…the data for each terminal and each overhead channel to provide…data symbols" and a TX channel processor 216 that "channelizes the data symbols and pilot symbols…[and] combines and spectrally spreads the channelized data and pilot symbols." Thus, interleaving is performed <u>prior to</u> channelizing the data. In contrast, claim 1 recites "interleaving the channelized data…." Moreover, there is no teaching with respect to interleaving data into "a unitary data stream <u>in chronological order</u>," as claimed. (Emphasis added.)

In connection with the foregoing points, Applicants respectfully note that "[i]n rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his or her command. When a reference is complex or shows or describes inventions other than that claimed by the applicant, <u>the particular part relied on must be designated as nearly as practicable</u>. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified." *See 37 CFR 1.104* (emphasis added). Therefore, should the Examiner maintain the same ground of rejection, Applicants respectfully request a more detailed explanation of how *Jayaraman* relates to "interleaving the channelized data into a unitary data stream <u>in chronological order</u>; and <u>processing the unitary data stream to extrapolate indicators of network elements</u>," as claimed. (Emphasis added.)

In light of the foregoing, Applicants respectfully submit that the Examiner has failed to establish a *prima facie* case of obviousness with respect to claim 1. Accordingly, the rejection of claim 1 should be withdrawn. Moreover, with respect to claims 2-6, the Examiner's reliance on *Ikeda* and *Warren* is unrelated to the claim 1 elements discussed above. Therefore, the rejection of claims 2-6 should be withdrawn at least because of their dependence from allowable claim 1.

B.   Claims 7-14

The Examiner rejected claims 7 and 10-13 under 35 U.S.C. § 103 as being unpatentable over *Ikeda* in view of *Warren*;[1] rejected claim 8 under 35 U.S.C. § 103 as being unpatentable over *Ikeda* in view of *Sharon*; rejected claim 9 under 35 U.S.C. § 103 as being unpatentable over *Ikeda* and *Warren* in view of *Sharon*; and rejected claim 14 under 35 U.S.C. § 103 as being unpatentable over *Ikeda* and *Warren* in view of U.S. patent No. 5,948,055 to *Pulsipher* ("*Pulsipher*"). Applicants respectfully traverse the rejection.

The Examiner repeated verbatim the rejection set forth in the Office Action mailed July 31, 2007 without taking note of, much less responding to, the following remarks set forth in Applicants' paper dated January 11, 2008:

> Claim 7 recites, among other things: "positioning a plurality of network analyzers in communication with the network; capturing trace data from a first and second channel on each of the analyzers; determining a first topology corresponding to the first channel of each said analyzer; [and] determining a second topology corresponding to the second channel of each said analyzer...."
>
> In contrast, *Ikeda* uses "<u>a</u> route analyzer" to determine a network's entire topology. *See e.g.*, paragraphs [0035] and [0036] ("Namely, a route analyzer can determine the topology of the entire network....") (emphasis added). Therefore, *Ikeda* does not teach or suggest "positioning a <u>plurality</u> of network analyzers in communication with the network; capturing trace data from a first and second channel on <u>each of the analyzers</u>; determining a first topology corresponding to the first channel of <u>each said analyzer</u>; [and] determining a second topology corresponding to the second channel of <u>each said analyzer</u>," as claimed. (Emphasis added.) Moreover, *Pulsipher* and *Warren*, relied on for various other claim limitations, do not remedy the deficiency of *Ikeda*.

The failure of the Examiner to address Applicants' prior arguments is contrary to established examination guidelines. Particularly, Applicants note that "[w]here the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, *take note of the applicant's argument <u>and answer the substance of it</u>." M.P.E.P. § 707.07(f)* (emphasis added).

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[1] The Office Action purported to reject claim 7 "as being unpatentable Ikeda...in view of Warren," but instead applied *Ikeda* and *Pulsipher*. See Office Action, **pp. 7 and 8**.

In light of the foregoing, Applicants respectfully submit that the Examiner has not established a *prima facie* case of obviousness and the rejection of claim 7 should be withdrawn. Moreover, with respect to claims 8-14, the Examiner's reliance on *Pulsipher*, *Sharon*, and *Warren* is unrelated to the claim 7 elements discussed above. Therefore, the rejection of claims 8-14 should be withdrawn at least because of their dependence from allowable claim 7.

C.   Claims 15 and 17-21

The Examiner rejected claim 15 under 35 U.S.C. § 103 as being unpatentable over *Sharon* in view of U.S. Patent No. 6,615,261 B1 to *Smorgrav* ("*Smorgrav*"); and rejected claim 18-21 under 35 U.S.C. § 103 as being unpatentable over *Sharon* in view of *Smorgrav* and further in view of *Warren*. Applicants respectfully traverse the rejection.

Applicants note at the outset that, although the Office Action Summary indicates that claim 17 is rejected, Applicants were unable to find any reasons for the rejection of claim 17 in the Detailed Action. Therefore clarification is respectfully requested as to the disposition of claim 17.

As to claim 15, the Examiner failed to take note of, much less respond to, the following remarks set forth in Applicants' paper dated January 11, 2008:

> Claim 15, as amended, recites, among other things: "capturing a left channel and a right channel data trace from each of the at least one analyzers; combining the left and right channel data traces into a unitary data stream; [and] extrapolating network device presence indicators from the unitary data stream." According to the Examiner, the Abstract of *Sharon* discloses "capturing a left channel and a right channel data trace...[and] extrapolating network device presence indicators from the left and right channel data." *See Office Action*, p. 12. Applicants respectfully disagree.

> The Abstract of *Sharon* generally describes automatically detecting a physical network topology using information from a variety of sources such as computers, agents, and bridging tables. The Abstract does not discuss what if any specific channel data traces are captured, much less whether any network device presence indicators are extrapolated from the data traces. Thus, the Abstract has no relationship to the specific claim limitations: "capturing a left channel and a right channel data trace from each of the at least one analyzers...[and] extrapolating network device presence indicators...." Should the Examiner maintain the same ground of rejection, Applicants respectfully request a more detailed explanation of how *Sharon* relates to the aforementioned claim limitations. *See 37 CFR 1.104.*

The failure of the Examiner to address Applicants' prior arguments is contrary to established examination guidelines. Particularly, Applicants note that "[w]here the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, *take note of the applicant 's argument and answer the substance of it*." M.P.E.P. § 707.07(f) (emphasis added).

Moreover, in rejecting claim 15, the Examiner conceded, "Sharon does not disclose combining the left and right channel data traces into a unitary data stream." *See Office Action*, p. 12. The Examiner asserted, however, that "Smorgrav discloses combining the left and right channel data traces into a unitary data stream (Col. 6 lines 21-28…)." *See id.* Applicants respectfully disagree.

Smorgrav describes performance analysis of data networks, including collection of performance data and using it "to detect problems that arise during network operation, or to detect trends in the network…." *See* id. col. 1, lines 10-25. For example, *Smorgrav* describes a process in which a "single data stream" is calculated from "one or more streams of samples for a time interval" and that "[t]he result of the process can be used to generate human readable reports used for network planning or troubleshooting, right-sizing of the network capacity, Service Level Agreement (SLA) analysis and monitoring, traffic-based routing and even automatic correction of error conditions in the network." *See* col. 6, lines 21-37. Therefore, *Smorgrav* contemplates using the results for various purposes but does not consider the results pertinent to "extrapolating network device presence indicators," as claimed. Consequently, the Examiner's apparent assumption that the results could be used for such purposes in the proposed combination with *Sharon* is mere speculation. "[R]ejections on obviousness cannot be sustained by mere conclusory statements." *See MPEP* § 2141.III (citing KSR, 550 U.S. at ___, 82 USPQ2d 1385, 1396). Therefore, should the Examiner maintain the same ground of rejection, clarification is respectfully requested as to how *Sharon* would extrapolate "network device presence indicators" from the single data stream produced by *Smorgrav*, which is used to "generate human readable reports."

In light of the foregoing points, Applicants respectfully submit that the Examiner has not established a *prima facie* case of obviousness and the rejection of claim 15 should be withdrawn. Moreover, with respect to claims 18-21, the Examiner's reliance on *Warren* is unrelated to the claim 15 elements discussed above. Therefore, the rejection of claims 18-21 should be withdrawn at least because of their dependence from allowable claim 15.

CONCLUSION

In view of the foregoing, Applicants believe the claims as amended are in allowable form. In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, or which may be overcome by an Examiner's Amendment, the Examiner is requested to contact the undersigned attorney.

The Commissioner is hereby authorized to charge payment of any of the following fees that may be applicable to this communication, or credit any overpayment, to Deposit Account No. 23-3178: (1) any filing fees required under 37 CFR § 1.16; and/or (2) any patent application and reexamination processing fees under 37 CFR § 1.17; and/or (3) any post issuance fees under 37 CFR § 1.20. In addition, if any additional extension of time is required, which has not otherwise been requested, please consider this a petition therefor and charge any additional fees that may be required to Deposit Account No. 23-3178.

Dated this 17th day of October, 2008.

Respectfully submitted,

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